

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

CLIFTON WILLIAM HAGGER, JR.

6311 Gulf Freeway, Apt. 2201

Houston, Texas 77023

Plaintiff,

v.

UNITED STATES

DEPARTMENT OF

VETERANS AFFAIRS

810 Vermont Ave., NW

Washington, DC 20420

Defendant.

Civil Action No. _____

**COMPLAINT FOR INJUNCTIVE RELIEF FOR VIOLATION OF
THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

1. Plaintiff, Clifton William Hagger, Jr., brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 to force Defendant, the Department of Veterans Affairs ("VA"), to comply with a FOIA request. Mr. Hagger has made multiply request for his **in-service mental health records** from VA related to his two admissions to the psychiatric ward at 2nd General Hospital located at Landstuhl,

Germany from April 24 to May 4, 1981 and from September 4 to September 8, 1981. Defendant has violated FOIA by failing to respond to the Mr. Hagger's request for all of his service treatment records within the statutorily prescribed time limit, and failing to disclose the requested documents. Mr. Hagger now asks the Court to order Defendant to respond to the request and to disclose all responsive records improperly withheld.

INTRODUCTION

2. This is an action to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to require the disclosure of 'in-service mental health records' that VA has improperly withheld and for other relief.

3. Pursuant to FOIA, Mr. Hagger has requested records [Exhibits 1-3] regarding his service mental health treatment at the psyche ward at 2nd General Hospital located in Landstuhl, Germany. The records are a matter of public concern. Without their release, the VA would also fail in its duty to assist Mr. Hagger to substantiate his claim for service-connect disability, and obtain evidence to help substantiate his claim for service-connected disability, under 38 U.S.C. 5103A. Without their release, Mr. Hagger will not know whether he can trust his government to enforce civil rights laws and intervene on his behalf. Without their release, Mr. Hagger will be uncertain about how to counsel himself about whether and how to seek the administrative remedies VA is tasked with providing. As a result, it will be harder for Mr. Hagger to hold the VA accountable for their violations of law under 5 U.S.C. § 522 and 38 U.S.C. § 5103A.

4. The purpose of FOIA is to promote government transparency and ensure citizens can hold their leaders accountable. The Department of Veterans Affairs has

violated FOIA by failing to release any records in response to Mr. Hagger's specific requests for his in-service mental health records by the deadline set by statute.

JURISDICTION AND VENUE

5. The Court as jurisdiction grant declaratory, injunctive, and further necessary and proper relief pursuant to 28 U.S.C. §§ 2201-2202 and Federal Rules of Civil Procedure 57 and 65.

6. Venue in this district is proper under 5 U.S.C § 522 (a)(4)(B) and 28 U.S.C. § 1391 (c)(1). Plaintiff resides in the judicial district in which he is domiciled.

PARTIES

7. Plaintiff, Clifton William Hagger, Jr., is a veteran of the U.S. Army who resides in Harris County, Texas, at 6311 Gulf Freeway, Apt. 2201, Houston, Texas 77023.

8. Defendant The United States Department of Veterans Affairs (VA) is a federal Cabinet-level agency that provides near-comprehensive healthcare services to eligible military veterans at VA medical centers and outpatient clinics located throughout the country; several non-healthcare benefits including disability compensation, vocational rehabilitation, education assistance, home loans, and life insurance; and provides burial and memorial benefits to eligible veterans and family members at 135 national cemeteries. The VA's main address 810 Vermont Ave., NW, Washington, DC 20420.

9. The Process Server for the Department of Veterans Affairs in Texas is Chief Counsel Jeffrey Stacey located at Office of Chief Counsel, P.O. Box 25126, Denver, CO 80225, or, Office of Chief Counsel, 155 Van Gordon, Suite 551, Lakewood, CO 80228.

FACTUAL BACKGROUND

10. Mr. Hagger served on active duty from August 1979 to September 1985. He contends that he incurred an acquired psychiatric disability manifested by Schizophreniform disorder aggravated by military service, PTSD, depression, sleep disorders, and drug abuse disability secondary to service-connected disability during service.

11. Mr. Hagger was trained as a medical specialist and his first duty assignment was at 2nd General Army Hospital located in Landstuhl, Germany. Mr. Hagger was assigned to the Critical Care Ward (CCU) as a patient care and clinical specialist. His duties were expanded, in time, to include working on the Burn Care Unit, where he removed charred skin and clothing from the bodies of burn victims and then treat and dress the resulting wound. He was also assigned to the Two-Man Early Response Team, to respond to the hospital code blue calls to provided CPR to victims until the Advance Response Team arrive at the scene, and then to assist the advance team until the victim was revived or pronounced dead by the attending physician, or to restraint violent patients. Mr. Hagger did rotations in the emergency room (ER). The first time the Mr. Hagger worked in the ER four service-members were brought in and three of them died in the ER. It was the first time Mr. Hagger had seen brain matter.

Working in the ER exposed Mr. Hagger to sights of exposed muscle and bones, and internal organs. Once Mr. Hagger was the medical personnel aboard a life-flight mission to rescue a service-member who was injured on the side of a mountain, and he was twice assigned to paramedic units. When patients died on the Critical Care Unit, he processed the bodies before sending them to the morgue by cleaning and positioning them.

12. Over time, Mr. Hagger developed a sense of 'helplessness' because he could not relieve the pain and suffering of the patients he care for on a daily basis. The helplessness developed into what he believed to be depression. Subsequently, he was confronted by his roommate, Reginald Gross, a psyche tech assigned to the psyche ward, who had noticed the changes in Mr. Hagger's behavior. Mr. Gross told Mr. Hagger that he thought Mr. Hagger was depressed and should sign-up of for psyche-sick call so he can get something for the depression. On April 24, 1981, Mr. Hagger signed up for psyche sick call for depression, as his chief complaint, and was seen by a clinical psychologist, who had Mr. Hagger admitted to the psyche unit, because he admitted under questioning that he was having visual hallucinations. Mr. Hagger remained on the unit for eleven days and was seen by the psychiatrist once. The psychiatrist told him that he would be monitored and if nothing wrong was seen regarding his behavior that he would be released from the psych unit and returned to work.

13. On May 4, 1981, Mr. Hagger was released from the psyche unit so he could return to work. He was given no follow-up, nor was he placed on any psyche meds, or given any psychotherapy. It would be decades later before Mr. Hagger would

learn that the psychiatrist had diagnosed him with 'schizophreniform disorder', which was performed on the basis of that single interview in 1981 and not on the basis of a longitudinal evaluation.

14. On the day that Mr. Hagger was released from the psyche unit, he was promoted to the rank of Specialist Four and resumed his duties on Critical Care Unit. Although, Mr. Hagger continued to suffer from depression he did not sign-up for psyche sick-call again because he had developed a distrust for mental health professionals and he feared that he would be locked up in the psyche unit and doped-up if he did not do his job without problems, and signing up for psyche sick-call, he believed, was a problem.

15. By August 1981, CPT Lanier, the head nurse for the Critical Care Unit, begin pressuring Mr. Hagger about using his leave time. However, at the time, it was the working that was Mr. Hagger one refuge from the depressive thoughts. But CPT Lanier would tire of the pressuring and on August 28, 1981, she ordered Mr. Hagger to take to leave the following Monday morning, which would be on August 31, 1981. CPT Lanier told him that she wanted him to take a two week leave and not a three day furlough. However, on the morning of August 31, 1981, there was a terrorist bombing at Ramstein Air force base. The hospital was placed on alert and leave was recalled and everyone was ordered to report to duty. When Mr. Hagger reported to duty, he was assigned to provide patient care to Brigadier General Joseph D. Moore, of the United States Air Force, who was the Assistant Deputy Chief of Staff for Operations, and who was injured in the terrorist bombing at Ramstein air force base.

16. Subsequently, when the general was discharged from the hospital, Mr. Hagger received letters of appreciation from Colonel Anton L. Hitzelberger, the hospital commander, at the time; and from Brigadier General J. D. Moore, himself [Exhibit 4]; and Major General Floyd W. Baker, the Medical Corps commander; and General Frederick J. Kroeson, who was the Commander-in-Chief for Armed forces in Europe.

17. However, the general's departure from the hospital also meant that Mr. Hagger had to carry out the Head Nurse's order to take leave. The very thought, Mr. Hagger reports, caused him to become more depressed. So when someone came along selling some acid, Mr. Hagger bought two tabs because he thought it would make him happy and he would stop being depressed. On September 4, 1981, Mr. Hagger took the acid and began experiencing bizarre visual hallucinations and ended up in the emergency room (ER). The ER doctor had Mr. Hagger admitted to the psyche unit for further evaluation. Mr. Hagger remained on the psyche unit for four days. On September 8, 1981, Mr. Hagger was released from the psyche unit and resumed his duties on the Critical Care Unit. And again, Mr. Hagger received no follow-up when he was discharged from the psyche unit.

18. During 1982, Mr. Hagger again tried to self-medicate himself for the depression he was experiencing at the time. This time, he used alcohol, and again he ended up in the ER. However, this time, Mr. Hagger was not sent to the psyche unit. But the Director of Nursing, himself, had Mr. Hagger reassigned from the Critical Care Unit to the Male Surgical Ward.

19. Nevertheless, Mr. Hagger's depression continued and he began experimenting with drug and became addicted to Hash. Subsequently, Mr. Hagger would be discharged from the military when a 'homemade' smoking device was discovered in his bedside nightstand during an unscheduled barrack inspection, and he admitted that the device was his.

20. Mr. Hagger continued to suffer from depression and he continued to use drug to self-medicate himself against the depression and he would subsequently seek treatment for the drug use and it was during this period of time that Mr. Hagger developed a positive opinion of mental health professionals because Mr. Hagger felt these people were really trying to help him at the time.

21. In 1986, Mr. Hagger filed a disability claim for a nervous condition and made his first request for his service treatment records, which he assume would include his in-service mental health records from April and September 1981. However, because a fire at boarding house where he lived, at the time, which destroyed his home and he ended up in shelter, Mr. Hagger did not immediately pursue his claim.

22. Mr. Hagger refiled a new claim in 2007 for depression, in which he made new request for in-service treatment records. Mr. Hagger did receive a copy of his medical records. However, the medical records Mr. Hagger received did include his service mental health treatment records, nor the treatment record for the September 4, 1981, incident involving his use of acid.

23. During 2008, Mr. Hagger was given a compensation and pension exam (C & P exam). Mr. Hagger has lost his copy of the records for the C& P exam, and has not been able to get a replace his copy from Release of Information at the VA Hospital

in Houston, Texas, so he reports that he cannot completely and factually reconstruct its contents. However, Mr. Hagger remembers the C & P exam summary mentions the dosage of medications given to Mr. Hagger while he was on the psyche unit back in August of 1981. Mr. Hagger's claim for service-connected disability was denied on the grounds that there was no medical evidence that he suffered from depression in the military and that he was diagnosed with schizophreniform disorder which is a congenial and development condition, and that his condition was not caused by military service. The decision provided Mr. Hagger with his first knowledge of the 'schizophreniform disorder' diagnosis.

24. On May 7, 2010, Mr. Hagger was given a C & P exam by D. Powell, a licensed clinical psychologist. The C & P exam summary list as evidence Mr. Hagger service treatment records. On pages 2-3 of the 2010 exam, it states "[t]he reason for admission [to the psyche unit] was for noted to be 'that he felt that other people were talking [about] him and referring to [him as] being effeminate.'" However, it was the understanding of Mr. Hagger that he was admitted to the psyche unit because he admitted under questioning that he was having visual hallucinations. Also on page 3, it states that "upon discharge that [Mr. Hagger] had [a] schizoid personality." Mr. Hagger must report that this statement is incorrect. He was never told by the psychiatrist in 1981 of any diagnosis. Mr. Hagger reports that he was only informed of a 'temporary treatment plan.' However, while he was being interviewed by the psychiatrist, the doctor was interrupted by a nurse and had to leave the room. When the psychiatrist was gone, Mr. Hagger got up and looked at what the doctor had written and seen his remarks about depressive and schizoid personality disorders, and assumed that was the

psychiatrist's diagnosis of him. It would be decades later that Mr. Hagger would learn that the remarks were only the psychiatrist's initial impressions. Further, in that same paragraph the summary states that "[t]he veteran reported that his delusional beliefs and hallucinations were related to his use of acid." Mr. Hagger must also report that this statement is taken out of context. The only thing Mr. Hagger could have stated about the September 4, 1981, use of acid, was that it caused him to hallucinate and one of the visions was of a religious nature. Mr. Hagger reports that he has never been aware of, or suffered from, or admitted to having delusions. On page 9, the examiner concluded "that the veteran diagnosis of depressive disorder is not due to or caused by the military service but is more likely caused by his chronic history of substance abuse. However, it the contention of Mr. Hagger that the mental conditions he suffered during August of 1981 were due to the stressful nature of the job he performed there and that his subsequent drug addiction was the result of his attempts to self-medicate himself against the psychiatric condition he acquired from his military service as a medical specialist while assigned to the Critical Care Unit at 2nd General Hospital located at Landstuhl, Germany.

25. In February of 2014, Mr. Hagger refiled his claim for service-connected disability for the acquired psychiatric disability he continues to suffer from. During June of 2014, Mr. Hagger entered the VA Domiciliary located at Houston, Texas. On June 17 & 26, 2014, Mr. Hagger was diagnosed with 'probable PTSD' [Based on DSM-V criteria] by Xiaofan Li, a psychiatrist and 'addiction fellow' at the Domiciliary. The PTSD diagnosis allowed Mr. Hagger to attend the PTSD group held by Natalie Hundt, whose goal to provide psychoeducation about PTSD and coping skills for veterans

who suffer from PTSD. During December of 2014 claim was denied and Mr. Hagger appealed.

26. On December 12, 2015, was given an 'impression of PTSD' [Based on DSM-5 criteria] by PA Martin K. Luke. However, when Mr. Hagger asked Mr. Luke for a PTSD Questionnaire, he was told by Mr. Luke that that was a conflict of interest for him. On December 6, 2016, Mr. Hagger was diagnosed with PTSD and MDD [Based on DSM-5 criteria] by Mohammed Asif Khan. However, when Mr. Hagger asked Mr. Khan for a medical statement regarding his PTSD, he was told by Mr. Khan that that was a conflict of interest for him. When Mr. Hagger complaint of the matter with patient advocate department at the VA hospital at Houston, he was told that the government health professionals would not help him because they were ordered not to.

27. On December 22, 2016, Mr. Hagger had a PTSD Questionnaire conducted by Jared D. Bernard, a PH.D. Psychologist. The Questionnaire list as evidence Mr. Hagger's in-service mental health treatment records for his two admissions to the psyche unit at 2nd General Hospital, including the April to May 1981 admission. Dr. Bernard concluded that Mr. Hagger's diagnosis of depressive order was not due to or caused by military service but is more likely related to cause by his chronic history of substance abuse, and he Mr. Hagger did not suffer from PTSD, although he had valid stressors from working on the Burn Care Unit and Emergency Room.

28. On August 10, 2017, Mr. Hagger's claim for service-connected disability was again denied. However, on August 17, 2017, Hurricane Harvey was formed. At the time, Mr. Hagger was a homeless veteran and the subsequent flood waters carry away

Mr. Hagger's campsite, which included an entire copy of his entire claim file. Mr. Hagger's life was disturbed by the storm, and he did not get around appealing the denial of his claim until November 2, 2017 [Exhibit 5], which was not timely. Mr. Hagger sought an exception to the time limit because he was a victim of Hurricane Harvey. However, Mr. Hagger discovered the following year during November of 2018 that no exception would be given and that he had to file a new claim.

29. It is the contention of Mr. Hagger regarding the medical evidence against his claim for service-connected disability, as he understands it, describes a case of a mental disorder caused by a congenial and development condition aggravated by pre-service and service use of drugs, and that he possibly suffered from a psychotic episode in April of 1981. And Mr. Hagger subsequent cases of depression are only independent cases of depression caused by whatever major problem Mr. Hagger was dealing with at the time and his chronic drug use, and not the continuous condition that Mr. Hagger has suffered from since April of 1981.

30. Mr. Hagger reports that he has encountered an adversarial system since filing his claim for service-connected disability, where he has been given medical exam summary which have been bias against him, and his in-service mental health records have been improperly with the intent, Mr. Hagger believe, to illegally deny him benefits.

RELIEF SOUGHT

31. Mr. Hagger seeks production of his in-service mental health records which he contends have been improperly withheld from him by the Department of Veterans Affairs.

32. The 'judicial review provisions apply to requests for information under subsections (a)(1) and (a)(2) of section 552 as well as under subsection (a)(3). *Am. Mail Line v. Gulick*, 411 F.2d 696, 701 (D.C. Cir. 1969).

33. See *Kennecott Utah Copper Corp. v. Becker*, 195 F.3d 1201. § 5529(a)(4)(B) is aimed at relieving the injury suffered by the individual complainant, not the general public. *Kennecott*, 195 F.3d at 1203. It allows district courts to order 'the production of any agency records improperly withheld from the complainant,' not agency records withheld from the public.

34. It is critical for Mr. Hagger to be provided a copy of his in-service mental health records so that he can substantiate his claim for service connection disability.

STATEMENT OF CLAIMS

Count I

(Failure in Respond to Request Within Statutory Timeframe)

35. Mr. Hagger re-alleges and incorporates the foregoing paragraphs as if set forth in full.

36. Defendant failed to respond to the Request within the statutory mandated timeframe, in violation of Mr. Hagger's rights under FOIA, including but not limited to 5 U.S.C. § 522(a)(6)(A)(i) and § (6)(B).

37. Defendant has failed to respond to the Request within the timeframe that the agency has set for itself [Exhibits 6-7].

Count II

(Failure to Produce Responsive Records)

38. Mr. Hagger re-alleges and incorporates the foregoing paragraphs as if set forth in full.

39. Defendant failed to make reasonable efforts to search for records responsive to the Request, in violation of Mr. Hagger's rights under FOIA, including but not limited to 5 U.S.C. § 522(a)(3).

40. Defendant failed to disclose and produce records responsive to the Request without a legal basis for withholding such records, in violation of FOIA, including but not limited to 5 U.S.C. §§ 522(a)(3)(A) and (6)(A).

41. Mr. Hagger is entitled to its reasonable attorney fees and cost under 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, Mr. Hagger requests that this Court:

- (a) Expedite its consideration of this action pursuant to 28 U.S.C. § 1657;
- (b) Find that Defendant's failure timely to respond or disclose records was unlawful;
- (c) Order Defendant to search for and promptly disclose all records responsive to Mr. Hagger's Request;
- (d) Award Mr. Hagger's attorney's fees and costs, if applicable; and
- (e) Grant such other relief as the Court may deem just and proper.

February 11, 2019.

A handwritten signature in black ink, appearing to read "Clifton W. Hagger, Jr.", followed by a large, stylized circular flourish.

CLIFTON WILLIAM HAGGER, JR.

Plaintiff

Pro se litigant

6311 Gulf Freeway, Apt. 2201

Houston, Texas 77023

713-941-9494

cosmoscliff@yahoo.com